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Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns

Addendum

Mission to the Gambia*

Summary

The Special Rapporteur on extrajudicial, summary or arbitrary executions conducted an official visit to the Gambia from 3 to 7 November 2014. The report presents his main findings, including with regard to the imposition of the death penalty, the resumption of executions, the use of force by law enforcement agencies, impunity for extrajudicial executions, the use of force during demonstrations, lack of accountability for human rights violations, groups at risk and fear of reprisals. It proposes recommendations to the Government, the international community and civil society to prevent unlawful killings and ensure better protection of the right to life.

* The summary of the present report is circulated in all official languages. The report itself, which is annexed to the summary, is circulated in the language of submission only.

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Annex

[English only]

Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, on his mission to the Gambia (3–7 November 2014)

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I. Introduction

1. At the invitation of the Government of the Gambia, the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, conducted a joint official visit to the country with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Mendez.[1]. The visit took place from 3 to 7 November 2014. It was originally scheduled for August 2014, but was postponed by the Government at the last minute for reasons still unknown. The Special Rapporteur on extrajudicial, summary or arbitrary executions thanks the Government of the Gambia for extending the invitation to visit the country, as well as all officials with whom he met. Additionally, he wishes to thank the United Nations country team and, in particular, the Resident Coordinator, for their logistical support. The Special Rapporteur is also especially grateful to the staff of the Office of the United Nations High Commissioner for Human Rights (OHCHR) West Africa Regional Office for their invaluable support in preparing for and carrying out the visit.

2. During the visit, the Special Rapporteur met with the Vice-President of the Gambia, the Minister of Foreign Affairs, the Minister of Interior, the Minister of Justice, officials of the Office of the Attorney General, the Office of the Solicitor General and the Office of the Director of Public Prosecutions, the Director General of the National Intelligence Agency, the Director General of the National Drug Enforcement Agency, the Director General of Prisons, the Inspector General of Police, the Chief Justice of the Supreme Court and High Court Justices, the Prison Visiting Committee and the Office of the Ombudsman. Additional meetings were held with the United Nations country team, the diplomatic community and civil society. In preparation for the visit, the Special Rapporteur met in Senegal with staff of the OHCHR West Africa Regional Office, and with representatives of the international community and of the Gambian community in exile. The Special Rapporteur on extrajudicial, summary or arbitrary executions expresses regret that the President of the Gambia was not available for a meeting with the two Special Rapporteurs during their stay in Banjul.

3. As is the case for all country missions, the Special Rapporteurs had requested authorization, in advance, in accordance with the terms of reference for fact-finding missions by Special Rapporteurs, which apply to all country visits in all parts of the world and which, among other things, include guarantees concerning "access to all prisons, detention centres and places of interrogation", "confidential and unsupervised contact with witnesses and other private persons, including persons deprived of their liberty", and protection from reprisals.[2] Such authorization was granted by the Government in a letter dated 27 October 2014 and was reiterated in a meeting with the Government at the outset of the visit.

4. Notwithstanding, when they commenced their visits to prisons, the Government denied the Special Rapporteurs in-situ access to the security wing in Mile 2 Prison and insisted on having prison personnel accompany them during the inspection. The Vice-President and other Government representatives, in a meeting held with the Special Rapporteurs where the latter protested against this exclusion, made it clear that they did not have the power to rule otherwise, and that the Special Rapporteurs would not be allowed into the security sections of the prisons in the country. This breach of the terms of reference

[1] The Special Rapporteur on the question of torture presented his report (A/HRC/28/68/Add.4) to the Human Rights Council at its twenty-eighth session.

[2] E/CN.4/1998/45, appendix V.

forced the Special Rapporteurs to suspend visits to prisons altogether. The notion of departing from the principle of unrestricted access in one country but not in others would have displayed double standards, created a dangerous precedent for the future and undermined the mandate entrusted to the Special Rapporteurs by the Human Rights Council. At the same time, it was too late to abandon the visit altogether. Although it was concluded, the visit cannot be viewed as full-fledged. The Special Rapporteur notes that, owing to the Government's refusal to allow unrestricted access to detention centres, an inference must be drawn that there is something there to hide.

5. The present report focuses on the situation as it was during the visit, although some references are made to subsequent developments, including the attempted coup d'état of 30 December 2014 and its reverberations. The report was sent to the Government for comments on 19 March 2015 and was completed on 5 May 2015.

II. General background

6. In 1994, a military coup installed Yahya Jammeh as President. A nominal return to civilian rule took place two years later, when a new constitution was established and presidential elections were held. Mr. Jammeh has been re-elected in all subsequent elections[3] and has since kept a strong grip on public and private affairs in the country. The Special Rapporteur perceived a high degree of personalization of State practice and of decision-making power in the figure of the President.

7. The Cabinet is appointed by the Head of State and appears to undergo continuous shuffling. Legislative power is vested in the unicameral National Assembly; opposition groups are insufficiently represented to be able to exert influence on the Assembly's decisions. The judicial system includes the Supreme Court, the Court of Appeal, the High Court, the Special Criminal Court and several lower courts. Judges are appointed by the President after consultation with the Judicial Service Commission and are granted life tenure. In practice, however, judges have frequently been removed without explanation, and their appointments have been heavily criticized for lack of independence and transparency.[4]

8. Economic development remains a challenge in the Gambia, with high poverty and unemployment rates and heavy reliance on foreign aid. The European Union is the country's biggest development assistance partner. However in December 2014, it cut off €13 million of funding, and threatened to block another €150 million in response to the country's poor human rights record.[5] In turn, the Gambia has recently turned to donor countries in the Gulf.

9. On 30 December 2014, military and ex-military officers in the Gambia attempted to stage a coup d'état, but were repelled by forces loyal to the President. Three alleged plotters were killed during the attacks and one was injured and captured. Up to 30 persons, including family members of insurgents, have been arrested and been held in incommunicado detention, with some being subjected to torture. Only 10 were reportedly released. The President proceeded to replace key members of the Cabinet following these events, including the Minister of Justice and the Minister of Foreign Affairs. At a court martial held on 30 March 2015, three persons were sentenced to death and three to life imprisonment for their alleged involvement in the failed coup.

[3] In 2011, ECOWAS stated that the environment was unconducive to the conduct of free and fair elections. See http://news.ecowas.int/presseshow.php?nb=234&lang=en&annee=2011.

[4] International Bar Association, "Under pressure: a report on the rule of law in Gambia" (August 2006).

Human rights overview

10. The country is characterized by disregard for the rule of law, infringements of civil liberties and the existence of a repressive State apparatus. State institutions are weak and under the influence and control of the executive power, namely the President. Transparency and accountability in public affairs are scarce and there are no independent institutions or processes to channel alternative voices or social demands. The activities of civil society organizations are closely monitored by the executive. The Special Rapporteur encountered many manifestations of fear and frustration in civil society, with reports of rampant State-led violence, persecution of the media and critical voices, and impunity for human rights violations. Human rights concerns also include interference with the independence of the judiciary, denial of due process, prolonged pretrial and incommunicado detention, poor prison conditions, persecution of lesbian, gay, bisexual and transgender (LGBT) persons, and tolerance of the practice of female genital mutilation. It appears that, at best, the State, for strategic reasons, occasionally pays lip service to human rights, but otherwise pursues the narrow interests of power and political survival. Human rights protection is largely an illusion.

III. Legal framework

11. The Constitution of the Gambia, approved by referendum, entered into force on 16 January 1997. Chapter IV of the Constitution provides for the protection of fundamental rights and freedoms. The right to life is established therein as a fundamental human right from which no derogation is permitted, even at a time of public emergency that threatens the life of the nation.[6] Despite these constitutional guarantees, compliance is deficient and many fundamental rights are routinely violated.

12. Moreover, in recent years, the Government has adopted legislation that infringes international human rights standards, such as (a) the Indemnity Act of 2001, which gives the President the power to indemnify law enforcement officials for abuse of force during situations of public emergency, unlawful assembly, public disturbance or rioting; (b) the Information and Communication Act of 2013, which creates several new offences and imposes harsher penalties for online activity deemed critical of the Government; (c) a series of amendments to the Criminal Code, which broaden definitions and impose harsher penalties for various offences, such as sedition, libel, public disorder, or giving false information; and (d) the Criminal Code (Amendment) Acts of 2005 and of 2014, sections 144 and 147, on "carnal knowledge of any person against the order of nature… and any other homosexual act" and on "aggravated homosexuality", which criminalize sexual activities between consenting adults.

13. The legal system of the Gambia requires the domestication of international treaties before they can be enforced by national courts. At the international and regional level, the Gambia has ratified several human rights treaties, including the International Covenant on Civil and Political Rights and its First Optional Protocol, and the African Charter on Human and Peoples' Rights. However, the country is yet to ratify a number of international human rights instruments, including the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention for the

[6] A/HRC/WG.6/7/GMB/1, p. 3.

Protection of All Persons from Enforced Disappearance, the Convention on the Rights of Persons with Disabilities, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. According to information provided by the United Nations country team, the Government has indicated that some of those treaties, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention on the Rights of Persons with Disabilities have been ratified by the National Assembly but the instruments have not been deposited with the Secretary-General of the United Nations.[7] When asked about such ratifications, the Special Rapporteur encountered confusing answers from State authorities, who seemed to be unaware of or insufficiently informed about the process and the current status of ratifications. Along with inadequate information management processes, Cabinet shuffles are arguably responsible for this, as the heads of key ministries such as justice and foreign affairs have changed continuously in recent years, resulting in a lack of institutional memory. The Special Rapporteur would like to take this opportunity to repeat the question to the Government: have these treaties been ratified?

IV. Cooperation with international and regional organizations

14. The country's cooperation with the United Nations human rights machinery has been limited. This was the first-ever visit to the country by a special procedures mandate holder of the Human Rights Council. Of the 14 communications sent by special procedures mandate holders since 2007, none has received a substantive response from the Government. The Gambia has submitted overdue reports to some treaty bodies and has failed to submit reports to others. The country has been reviewed twice under the universal periodic review, in 2010 and 2014. The Government has failed to implement many of the recommendations of the first review, and rejected 78 of the 171 recommendations of the second review, including on the maintenance of the moratorium on executions and the abolition of the death penalty, and on cooperation with special procedures.[8]

15. At the regional level, the Gambia has accepted the jurisdiction of the Economic Community of West African States (ECOWAS) Community Court of Justice but has not accepted the competence of the African Court on Human and Peoples' Rights. The ECOWAS Community Court of Justice has ruled three times against the Government of the Gambia. The Government has failed to implement those decisions, as well as a series of resolutions issued by the African Commission on Human and Peoples' Rights.

16. The headquarters of the African Commission on Human and Peoples' Rights are, for historical reasons, based in the Gambia. The Commission has an important role to play in the protection of human rights in general, and the right to life in particular. To what extent the location of the Commission in the Gambia is conducive to that goal is uncertain. In 2009, the Commission understandably called on the African Union to consider relocating

[7] See A/HRC/WG.6/20/GMB/2, p. 3. At the 2014 universal periodic review, the Gambian delegation stated that the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol had been accepted by the National Assembly and were in the process of ratification; see A/HRC/28/6, para. 92.

[8] The Gambia also rejected recommendations concerning the ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the non-criminalization of sexual orientation or gender identity, and the removal of restrictions on freedom of expression.

its secretariat, following a highly inappropriate public statement by Mr. Jammeh threatening to kill human rights defenders and their supporters.[9]

17. In general, it can be said that the Gambia shows little regard for the international bodies to which it belongs — whether those are United Nations or African structures.

V. Main challenges encountered

A. Death penalty

18. The death penalty was abolished in the Gambia in 1993 but was reinstated by the administration of Mr. Jammeh in 1995, which argued that since its abolition there had been a steady increase in homicides and treasonable offences.[10] The 1997 Constitution mandates the National Assembly to review the desirability of the death penalty 10 years after its entry into force, with a view to its possible total abolition.[11] The review should have taken place in 2007 and is now eight years overdue; this appears to have been a hollow promise.

19. According to article 18 (2) of the 1997 Constitution, "no court in the Gambia shall be competent to impose a sentence of death for any offence unless the sentence is prescribed by law and the offence involves violence, or the administration of any toxic substance, resulting in the death of another person". On face value, this appears to be in line with the international standard relating to the "most serious crimes", according to which the scope of the crimes punishable by death should not go beyond intentional crimes with lethal or other extremely grave consequences.[12] The reality, however, is different.

20. A review of Gambian law shows that the Criminal Code,[13] the Gambia Armed Forces Act[14] and the Anti-Terrorism Act[15] set out a number of offences that are punishable by death, including treason, murder, aiding the enemy, offences by persons in command when in action, offences relating to security, offences relating to prisoners of war, offences relating to convoys, mutiny with violence, and acts of terrorism. These offences do not intrinsically entail the killing of another person, much less an intentional killing.

21. The Special Rapporteur expressed publicly his concern[16] that in October 2012 the Supreme Court had upheld the death penalty for treason in the constitutional challenge brought by Lieutenant General Lang Tombong Tamba and his co-defendants; it had argued that article 18 (2) envisaged the death penalty for all crimes involving "violence", understood to include attempted violence or violence that did not result in death.[17] The problems of this interpretation under international human rights norms are clear (see para. 19 above), but a plain reading of article 18 (2) also shows that it requires violence or

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[9] See http://www.achpr.org/press/2009/10/d71/. On 29 September 2009, the Special Rapporteur sent a joint urgent appeal concerning the speech, but did not receive a response from the Government. See also A/HRC/14/24/Add.1.

[10] See A/HRC/WG.6/7/GMB/1, p. 3.

[11] Article 18 (3).

[12] Article 6 (2) of the International Covenant on Civil and Political Rights and article 1 of the safeguards guaranteeing protection of the rights of those facing the death penalty.

[13] Sections 35 and 188.

[14] Sections 36–39, 41 and 45.

[15] Section 3 (1).

[16] See http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15265&LangID=E.

[17] *Badjie* v. *State* (2012), Supreme Court criminal appeal 1-7/2011 (Gambia). See: Andrew Novak, "The rule of law, constitutional reform, and the death penalty in the Gambia", *Richmond Journal of Global Law and Business*, vol. 12, No. 2, p. 219.

the administration of a substance "resulting in the death of another person", not merely with the potential of resulting in the death of another person. The Special Rapporteur is pleased to learn that, on 12 November 2014, the Supreme Court unanimously agreed and commuted the death sentences of Lang Tombong Tamba and his co-defendants to life imprisonment.[18]

22. Following the attempted coup of December 2014, seven people stood trial at a court martial on charges of treason, conspiracy, mutiny and assisting the enemy.[19] Three persons were sentenced to death (Lieutenant Colonel Sarjo Jarju, Private Modou Njie and Lieutenant Buba Sanneh) and three were sentenced to life imprisonment (Captain Buba Bojang, Lieutenant Amadou Sowe and Captain Amadou Jobe). Notwithstanding legal requirements for court martial hearings to be public, control was reportedly tight and access to the media was banned, giving rise to concerns about the fairness of the trial.[20] The Government did not ensure the presence of independent observers, despite a United Nations request in that regard. The accused were reportedly represented at the trial by lawyers sent by the National Agency for Legal Aid. Fear has been expressed that the persons sentenced to death could be executed at short notice, even if they have the right to appeal. The Special Rapporteur recalls that the imposition of the death penalty for crimes that are not intentional and do not result in death, or following trials that do not meet the most stringent guarantees of due process, are incompatible with international standards and may constitute an arbitrary execution. Reports also indicate that the accused were detained incommunicado and were subjected to torture while in custody.

23. Furthermore, the Special Rapporteur is concerned that, under the Criminal Procedure Code of the Gambia, the death penalty is mandatory for murder (the Government requested that it be noted that it is discretionary under the Gambian Armed Forces Act). A mandatory death penalty, for any offence, is a violation of international human rights law standards, as it prevents judges from considering extenuating circumstances or choosing the imposition of more lenient punishments in individual cases.[21] The mandatory death penalty for drug trafficking was abolished in 2011.

24. The Special Rapporteur received reports about the inadequate conditions of detention of death row prisoners, who are held in the security wing of Mile 2 Prison in solitary confinement, and in small, dark and poorly ventilated cells. In addition, numerous reports, including from former inmates interviewed by the Special Rapporteur, indicate that they are denied visits from their legal representatives and relatives (an allegation that the Government denies), are not allowed to receive food from them and are only allowed 10 minutes of exercise per day.[22]

B. Resumption of executions and conditional moratorium

25. After 27 years of no executions, Mr. Jammeh announced in August 2012 that all existing death sentences would be carried out. On 23 August 2012, nine death row prisoners held at Mile 2 Prison were executed, allegedly by a firing squad. At the time of the executions, there were 47 inmates on death row. According to the available evidence, the death sentences were imposed in violation of major international fair trial standards, including the "most serious crimes" provisions. The following week the executions were

[18] See https://www.amnesty.org/en/countries/africa/gambia/report-gambia/.

[19] See https://www.amnesty.org/en/articles/news/2015/04/gambia-soldiers-sentenced-to-death-in-secret-trial-must-not-be-executed/.

[20] Ibid.

[21] See A/67/275, p. 13.

[22] For further details on conditions of detention, see A/HRC/28/68/Add.4

halted, and the remaining prisoners on death row were spared. The only difference between those who lived and those who died seems to be pure luck. The killings were, in other words, arbitrary and thus unlawful.

26. This callous treatment of human life shocked the international community and was met with global condemnation, including by the United Nations High Commissioner for Human Rights,[23] the African Commission on Human and Peoples' Rights[24] and the European Union.[25] The Special Rapporteur sent an urgent appeal to the Government and expressed publicly his outrage over the resumption of executions, but did not receive a substantive response from the Government.[26]

27. Reports that were brought to the attention of the Special Rapporteur indicate that Malang Sonko, Tabara Samba, Buba Yarboe, Gebe Bah, Lamin Jarju, Alieu Bah and Lamin Jammeh were executed without exhaustion of their legal appeals. Another person who was executed, Dawda Bojang, had been sentenced to life imprisonment in 2007 but had had his sentence altered to capital punishment in 2010 after he appealed to the High Court. At the time of the execution, he had not exhausted his appeal to the Supreme Court. The death sentence of another prisoner, Lamin Darboe, had been commuted to life imprisonment in 1991 and was then reinstated by the Armed Forces Provisional Council in 1995 when Gambia restored the death penalty, in violation of the principles of non-retroactivity of the law and the right to benefit from a lighter penalty.[27] He had not exhausted his legal appeals.

28. The Government denies that the nine prisoners were executed pending exhaustion of their appeals. According to information from other sources, none of the cases were brought to the Supreme Court before the executions were carried out, and some did not reach the Court of Appeal. As the Constitution provides that appeals in death penalty cases are automatic,[28] the onus was on the authorities to ensure that appeals reached a higher tribunal. If the information obtained is correct, these incidents are in violation of national[29] and international norms prescribing that procedural guarantees must be observed before the death penalty can be imposed, including the right to review by a higher tribunal. The Government could easily prove their version by making records of the court proceedings available. So far they have elected not to do so. The Government is again requested to provide the records.

29. Reports further indicate that the trials did not meet other due process safeguards, such as the right to consular assistance. Two Senegalese prisoners — Tabara Samba and Gebe Bah — were among those executed, however the Senegalese authorities were not informed prior to the executions.

30. The Special Rapporteur was also informed that one of those executed, Mr. Yarboe, may have had a mental disability, an allegation denied by the Government. International law provisions prohibit the imposition or execution of the death penalty on a person who has any form of intellectual or psychosocial disability.[30]

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[23] http://www.un.org/apps/news/story.asp?NewsID=42772&Cr=Human+Rights&Cr1=#.UG25yE3AeE3.

[24] See http://www.achpr.org/press/2012/08/d127/.

[25] See http://eu-un.europa.eu/articles/en/article_12527_en.htm.

[26] See A/HRC/22/67. For the press statement, see http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12461&LangID=E.

[27] Safeguards, article 2.

[28] Section 128 (1) of the Constitution provides for an automatic appeal.

[29] See A/HRC/14/6.

[30] Safeguards, article 3.

31. Furthermore, the Special Rapporteur expresses concern that the executions were carried out in secrecy and without prior notification being provided to the prisoners, their families or their lawyers. According to reports, the Gambian authorities only confirmed the executions several days after they had taken place. This practice runs counter to the general obligation of States not to practise the death penalty in secrecy.[31]

32. In addition, the bodies of those executed were not returned to their families and they were not informed of the place of burial.

33. The Prison Visiting Committee, comprised mainly of serving or former government officials, reportedly visited Mile 2 Prison only three months after the executions.

34. In September 2012, a renewed conditional moratorium was put in place, dependent on the rise or fall of the crime rate in the country. The moratorium is obviously to be welcomed, but the precondition is problematic — the question of whether those on death row will live or die is made contingent upon external developments that are far outside their control.[32]

C. Use of force by law enforcement agencies and activities of paramilitary groups

35. A repressive State apparatus in the hands of the security forces appears to reign in the Gambia. There is widespread fear in civil society about the unchecked use of force by law enforcement agencies. The security forces, over which the President retains a strong grip, actively repress any sign of discontent, terrorizing civil society and instilling a climate of fear and mistrust via routine arrests, enforced disappearances and extrajudicial executions carried out against anyone considered to be critical of or threatening to the regime. The security forces are also widely perceived to be corrupt and inefficient.[33]

36. The Constitution of the Gambia does not require the existence of an imminent threat of death or serious injury for the use of lethal force, nor does it require that it only be used when it is strictly unavoidable in order to protect life, as prescribed by international law. Conversely, under article 18 (4) of the Constitution, the use of such force is allowed when "reasonably justifiable" for the defence of property, "to effect lawful arrest or prevent the escape of a lawfully detained person", "to prevent criminal offences", or in cases of "riots, insurrection or mutiny". Under this provision, deprivation of life for such offences may not be regarded as arbitrary, if reasonably justifiable in the circumstances of the case. This gives law enforcement officials unrestricted power to use lethal force at will, including for minor offences against property, without fearing administrative or legal sanctions. The Special Rapporteur notes with concern that this provision sets the threshold for the use of force excessively low and is incompatible with international law norms.

1. Gambian Police Force

37. The Gambian Police Force, mandated to maintain law and order in the country, is headed by the Inspector General of the Police and is placed under the authority of the Ministry of Interior. Police conduct is governed by the Constitution, the 1949 Police Act,[34] the Criminal Procedure Code and the Public Order Act, among other laws. Additionally, the Ministry of Interior is currently revising a draft "Code of Conduct for the Ministry of

[31] See, for example, A/65/280, para. 72, quoted in A/67/275, para. 99.
[32] A/69/265, para. 103.
[33] United States Department of State, "The Gambia 2013 human rights report", p. 7.
[34] As amended by Act 5/1998.

Interior and Security Services under the purview of the Ministry", which will replace the current code. The Special Rapporteur was also provided with a copy of a "Ministry of Interior Policy Manual on the Use of Force", although it is not clear if the document has been adopted or it is still a draft.

38. The Special Rapporteur is concerned that the Gambian legislation setting out the constraints and requirements for the use of force by the police is insufficient. The only instrument setting certain conditions for the use of force is the aforementioned manual, which provides a set of guidelines on "the reasonable" use of force, reporting structures and responsibilities for cases involving force, and directives for situations requiring medical attention. Although reference is made to an immediate threat to life or serious injuries as one of the factors determining such reasonableness, concern is raised that much emphasis is placed on the officer's discretion at the time of the events. While the manual provides for the use of restraining techniques and deadly force in such situations of threat, it does not include directives defining the circumstances, conditions, degree and manner in which such force may be used.

39. On the other hand, the new draft code of conduct is addressed to all officials under the authority of the Ministry, not only law enforcement officials. As a result, the code is vague and focuses on internal management and performance issues, rather than on standards for the use of force, except for reference to the obligation to prevent death in custody and to use force that is lawful and proportionate to the threat. More specific guidelines on the conditions for the use of force, training requirements, and internal accountability mechanisms remain to be integrated into the code.

40. The existing police training manual does not include human rights issues. The Inspector General of the Police has noted the force's aspiration to integrate such training into its curricula. The Special Rapporteur has been informed of discussions with international organizations on the provision of technical assistance in this matter and encourages such an initiative.

41. According to Gambian law, the police are required to obtain a warrant before arresting a person,[35] and the suspect must be informed of the reason for the arrest within three hours, and be either charged or released within 72 hours.[36] However, the Special Rapporteur has received reports that the police sometimes extend the 72-hour limit on detention without charge and seldom conduct arrests pursuant to a warrant. Other deficient arrest procedures include delays in informing detainees of the charges being laid against them, and delays in facilitating access to lawyers and to family members. Several allegations were made about the police using excessive force against suspects during arrest, interrogation and pretrial detention. With regard to the practice of torture or ill-treatment, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has indicated that, while in some individual cases ill-treatment does occur in police stations and during arrest or transfer to police stations, he has not found evidence that such abuses are part of a widespread pattern or systemic practice.[37] The Special Rapporteur on extrajudicial, summary or arbitrary executions recalls that States are held to a heightened level of diligence in protecting the lives of detainees and must take adequate measures to protect their lives.[38]

[35] However, section 15 of the Criminal Procedure Code and other laws allow arrests without a warrant in certain instances.

[36] Article 19 of the Constitution.

[37] See A/HRC/28/68/Add.4.

[38] Luanda Guidelines on the Conditions of Arrest, Police Custody and Pretrial Detention in Africa.

42. The Inspector General of the Police confirmed the existence of paramilitary units, which are established as armed wings of the police and are mandated to conduct crowd control during public events, riots or other civil disruptions, as well as to perform other general policing duties for which they are only armed with a truncheon and handcuffs. Likewise, he noted the existence of an anti-terror unit, consisting generally of police officers who perform their duties unarmed.

43. The Inspector General also confirmed the existence of a unit within the security forces called the "Bulldozers", which reports to the Inspector General and is headed by the Deputy of the Gambian Police Force. It is an operational task force consisting of agents from different security forces who come together, when required by a particular situation, to perform special tasks, which often entail patrolling and arresting suspects who are later rendered to the relevant departments. It has been criticized for abuses in the conduct of its operations. When launching "Operation Bulldozer" in 2012, Mr. Jammeh instructed security forces to "shoot first and ask questions later" to rid the country of all criminals.[39] This message gives security officers the idea that it is permissible to use lethal force as a first resort, which is in stark violation of international standards on the use of force.

2. National Intelligence Agency and National Drug Enforcement Agency

44. The legal constraints on the use of force by the National Intelligence Agency and the National Drug Enforcement Agency are even less clear than those on the police. These agencies fall under the responsibility of the President's Office and report directly to him. The National Intelligence Agency is mandated to guard State security, conduct intelligence work and collect intelligence data. Although the Constitution does not provide for the establishment of this agency, the Special Rapporteur was informed that military decrees enacted prior to the adoption of the 1997 Constitution give the National Intelligence Agency broad powers to carry out arrests without charges and to detain individuals indefinitely in the interest of national security. The Special Rapporteur was not able to get hold of a copy of the decrees, and their enforcement was not confirmed or denied by State authorities. Officials interviewed by the Special Rapporteur denied that the National Intelligence Agency assumed police functions of arrest, detention and interrogation, and indicated that such incidents occurred in exceptional cases and until the police could take custody of the suspects. However, the Special Rapporteur received numerous reports to the contrary.

45. The aforementioned code of conduct will not govern the conduct of agents of the National Intelligence Agency or the National Drug Enforcement Agency, as these agencies are not under the authority of the Ministry of Interior. Although officials informed of the existence of a code of conduct for the National Intelligence Agency, the Special Rapporteur was unable to obtain a copy. The Drug Control Act mandates the National Drug Enforcement Agency to investigate drug trafficking and related crimes, and provides some guidelines on their activities. It seems, however, that the National Drug Enforcement Agency is also de facto invested with broad powers to protect State security, and it is not clear what the constraints are on their powers to use force.

46. The Special Rapporteur received alarming reports of persons being detained, tortured, and even disappeared or executed at the hands of the National Intelligence Agency. The reports also indicate that the National Intelligence Agency places arrested suspects in detention facilities within its premises, where persons are held incommunicado without charge for weeks or months before being brought before a judge or the police, are subjected to intense interrogations which routinely include ill-treatment and sometimes

[39] See http://www.statehouse.gm/Operation-Bulldozer-Launched_22052012.htm

torture,[40] and are denied access to a lawyer or to their families. In most cases, family members are not informed of the detention or the whereabouts of the person concerned. Many of those interviewed told the Special Rapporteur of a place called "Bambadinka" in the National Intelligence Agency headquarters, which they say is used for these purposes. In interviews with high-ranking officials of the Agency, the existence of places of detention under Agency jurisdiction was profusely denied.[41] Cases of abuse of power, including death in custody, by agents of the National Drug Enforcement Agency have also been reported to the Special Rapporteur.

47. The Special Rapporteur expresses serious concern about the unchecked and broad powers afforded to the National Intelligence Agency, the National Drug Enforcement Agency and the special units that operate under the umbrella of the Gambian Police Force. The lack of clarity on the rules governing the use of force by law enforcement agencies performing arrest and detention duties provides fertile ground for abuses to take place and is in stark violation of the requirements of international law. In order for abuses not to take place, it is the responsibility of the authorities to establish clear rules, rights and duties for the conduct of all State agents that have law enforcement powers.[42]

3. Prison services

48. The Special Rapporteur received reports of cases of excessive use of force and cases of denial of medical care by prison officials that had occasionally led to deaths in custody, which were not adequately examined by forensic experts due to negligence and a lack of in-house forensic expertise.[43] The Government did not provide statistics but advised that all deaths in custody were from natural causes.

4. Paramilitary groups

49. The Special Rapporteur received diverse reports and testimonies about the existence of paramilitary groups in the country associated with the security forces and operating under direct orders of the President. A group reportedly called the "Jungullars" or "Junglers" was associated in those reports with arbitrary arrests, detention, torture, enforced disappearances and extrajudicial killings, of persons opposed to the regime, journalists and ordinary civilians. Such a unit, if it exists, will clearly be unlawful under international law and expose anyone involved in it to criminal prosecution. A judicial commission should investigate the very serious allegations in this regard.

50. The Special Rapporteur has also received reports about another group called the "Green Boys", made up of young activists supporting the ruling party and accused, among other things, of taking part in a witch-hunting campaign against hundreds of villagers in 2009. In its discussions with the Special Rapporteur, State officials denied the armed character of the Green Boys, indicating that they were a political group.

51. The Special Rapporteur recalls that there is a positive obligation on the State of the Gambia to ensure the protection of persons under its jurisdiction against violations by private persons or entities. The authorities must exercise due diligence to prevent, investigate, punish and redress the harm caused by non-State actors, and to bring the perpetrators to justice (CCPR/C/21/Rev.1/Add.13, paras. 8 and 18).

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[40] See A/HRC/28/68/Add.4, p. 6.

[41] For further information about allegations of torture by National Intelligence Agency agents, see A/HRC/28/68/Add.4.

[42] A/HRC/26/36, para. 26.

[43] The lack of trained forensic expertise to carry out autopsies appears to be replicated in the police and the judiciary. For further details about forensic services in the Gambia, see A/HRC/28/68/Add.4.

D. Impunity for extrajudicial executions and enforced disappearances

52. The Special Rapporteur received reports of rampant impunity for extrajudicial executions and unlawful killings against those who are deemed to be opponents or a threat to the regime.

53. Emblematic cases, such as the killing of Deyda Hydara, editor of *The Point Newspaper* and president of the Gambia Press Union, remain unresolved. Mr. Hydara was shot dead in his car in 2004 following the adoption of controversial legislation that he had opposed. The ECOWAS Court of Justice found that the Government had failed to conduct a diligent investigation into the case and ordered the payment of compensation to Mr. Hydara's family.[44] The ruling has not yet been complied with.

54. The Government has also failed to investigate the death of 50 foreign nationals, including 44 Ghanaians, intercepted by security forces in the Gambia on suspicion of planning to overthrow the Government. Reports indicate that the victims were migrants attempting to take a vessel to Europe. A 2009 fact-finding mission by the United Nations and ECOWAS, established to investigate the case, determined the responsibility of rogue security officers for these deaths,[45] however the Government failed to prosecute them.

55. The Special Rapporteur received distressing reports about the secret detention in 2009 of over 1,000 residents of the Foni Kansala district as part of a witch-hunting campaign supported by members of the President's personal guard, the Green Boys, the Gambian Police Force, the National Intelligence Agency, and soldiers. The "witch hunters", reportedly brought in by the President, forced the villagers to drink a herbal concoction and confess to "witchcraft", leading to six deaths from kidney failure. No one was brought to justice for the incident, and one opposition leader who exposed the case was charged with treason and was held in Mile 2 Prison until 2012.[46]

56. In 2011, National Drug Enforcement Agency agents were accused of killing Cherno Alieu Suwareh during a violent arrest. Although two officers were prosecuted, the courts discharged them for lack of evidence.[47]

57. Three alleged plotters were killed during the Government's response to the 2014 attempted coup, as confirmed by the Government. Photographs presented to the Special Rapporteur as being of the dead bodies, if authentic, raise questions about the circumstances that led to their deaths. The apparent pattern of injuries in the photographs does not appear to be consistent with the official version of events. There is no available information on whether official autopsies have been carried out on the bodies of the deceased or on whether appropriate investigations have been launched into the circumstances of their deaths. An in-depth forensic analysis should shed light on the causes of death. The Special Rapporteur sent a communication to the Government requesting clarifications and has received no reply yet.

58. Reports of enforced disappearances were also brought to the attention of the Special Rapporteur, inasmuch as it is feared that they may in fact constitute cases of extrajudicial killing. One such case is the abduction and later disappearance of "Chief" Ebrima Manneh, a journalist at the *Daily Observer*, who was reportedly arrested in July 2006 by government agents, although charges were never brought against him. His whereabouts remain

[44] ECW/CCJ/APP/30/11 of 10 June 2014.

[45] See http://www.state.gov/documents/organization/160123.pdf.

[46] Amnesty International, Article 19 and Rencontre Africaine pour la Défense des Droits de l'Homme, "20 years of fear in Gambia: Time for Justice!".

[47] "The Gambia 2013 human rights report", p. 2.

unknown and there are fears that he may have been executed. The Government denies ever having had him in its custody. The ECOWAS Court of Justice ordered the Government to release him immediately and to pay compensation to his family.[48] The judgement has not been implemented.

59. Much has been made by the Government about the need for international assistance to investigate the cases of Mr. Manneh and Mr. Hydara. In view of the way in which the Government failed to honour its commitment to grant the Special Rapporteurs full access to detainees and to places of detention, there is reason to be concerned that international investigators will likewise not, in the end, receive the support they need in order to do their work properly. Unless the highest authority in the country gives a firm commitment that such investigators will have the access they need, talks about such assistance are likely to be just another attempt to avoid accountability.

60. Also in 2006, five security officers disappeared after having been arrested on suspicion of treason and planning a coup. The Government indicated that, following their arrest, Daba Marenah (former Director General of the National Intelligence Agency), Ebou Lowe, Alieu Ceesay, Alpha Bah and Manlafi Corr managed to escape from the car in which they were being transferred, after the car was involved in a road accident. However, the officers were never seen again and their disappearance was never investigated.

61. Given the time that has elapsed since these abductions and the lack of information regarding the fate and whereabouts of the persons concerned, it is feared that they may have been subjected to unlawful or extrajudicial killings.

62. More recently, reports have emerged regarding the abduction and disappearance of United States-Gambian citizens Alhaji Mamut Ceesay and Ebrima Jobe. They were abducted in June 2013 and their fate and whereabouts remain unknown. Although some unconfirmed reports indicate that they may have been held in detention in some undisclosed location, there are also fears that they may have been extrajudicially killed.

63. In August 2013, Colonel Ndure Cham, a former Chief of Defence of the Gambia who was accused by the Government of plotting a coup in 2006 was reportedly apprehended by the authorities and has never been seen again. Although the circumstances of his arrest and his whereabouts remain unclear, some sources allege that he may have been captured at the border with Senegal and that he may have been summarily executed.

64. The Special Rapporteur recalls the duty of the Government to take measures to prevent and punish deprivation of life by criminal acts, to prevent arbitrary killing by its own security forces, and to conduct thorough, prompt and impartial investigations into all suspected cases of extralegal, arbitrary and summary execution.

E. Public demonstrations and the use of force

65. In April 2000, 13 students and a journalist were killed and 28 persons were wounded when security forces opened fire during a peaceful demonstration organized by students. An inquiry set up to investigate the events concluded that the security forces deployed to control the demonstration were responsible for the deaths, however the Government subsequently rejected the findings and no one was brought to justice.

66. According to testimonies received, the climate of fear engendered by this event and the impunity that followed have reduced to a minimum the numbers of demonstrations that have taken place in the country since then.

[48] See ECW/CCJ/JUD/03/08.

67. Gambia's legal regime also deters activists from organizing or participating in assemblies. The Gambian Constitution allows the use of force in cases of "riot, insurrection or mutiny" and affords immunity to law enforcement officials for deprivation of life in such circumstances, giving them carte blanche to use force at will. Moreover, the Indemnity Act, adopted a year after the incident, has allowed security officers accused of abuse of force during the demonstration to be indemnified. Additionally, the Public Order Act establishes the requirement of authorization for the organization of rallies or demonstrations.

68. The Special Rapporteur expresses serious concern about the excessive powers — and the concomitant impunity — awarded by Gambian law to security officers to thwart public demonstrations, and about the restrictions imposed for the organization of such acts; and recalls that everyone is allowed to participate in lawful and peaceful assemblies, in accordance with the principles embodied in international law, and that intentional lethal use of firearms in such circumstances may only be made when strictly unavoidable in order to protect life, and otherwise must be investigated and sanctioned by a court of law.[49] Regarding the aforementioned case, he regrets that the use of unwarranted and excessive force by security officers assigned to guarantee public safety led to the death of students and a journalist, and that, 14 years on, the authorities have failed to bring about accountability for those crimes.

F. Accountability for human rights violations

69. A general culture of accountability and the existence of effective institutional channels for redress are essential for protection of the right to life. On several occasions, the Special Rapporteur heard that police or judicial authorities either do not carry out investigations, or, if they do, they are not carried out properly. Other institutions mandated to address misconduct by law enforcement officials appear to be underutilized or ineffective.

70. It is generally perceived that citizens avoid reporting abuse by the police due to fear of reprisal, lack of substantive redress and a general mistrust of the police. Complaints against the police are generally dealt with by the Complaints and Discipline Unit, based in the Gambian Police Force since 1994, which handles most complaints relating to police misconduct. The Inspector General of the Police informed the Special Rapporteur about the creation in 2012 of a Human Rights Unit within the police force, which deals with complaints of torture and inhuman treatment at the hands of the police. While the Special Rapporteur welcomes the establishment of the unit, he is concerned that, being staffed by police officers and positioned within the police, this complaint mechanism may be perceived as ineffective, vulnerable to internal pressure and lacking impartiality, dissuading victims of abuse from submitting complaints. Moreover, certain victims, for example those held in prisons under police control, may refrain from submitting complaints due to fear of reprisals. The Special Rapporteur was informed that only one complaint has so far been brought before the unit, but it was subsequently withdrawn. The Office of the Ombudsman is also tasked with handling complaints about police misconduct, but has no mandate to investigate human rights violations.[50] Official data about the number of law enforcement officials reprimanded or prosecuted for violations of the right to life under these mechanisms was not forthcoming.

[49] Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, principles 12 and 9, and Code of Conduct for Law Enforcement Officials, article 3.

[50] "The Gambia 2013 human rights report", p. 7.

71. Mistrust and fear appear to be amplified in matters that concern accountability for abuses by members of the National Intelligence Agency. The legal gap governing their conduct and, equally, sanctioning their abuses, and the public perception that the institution operates behind a veil of impunity and that, ultimately, it has the power to exercise unrestrained control over the lives of Gambian citizens, makes the lodging of complaints of misconduct by its agents all the more implausible. Citizens are reluctant to denounce abuses, engage legal services or seek redress, even for the most serious violations, including disappearances, torture or probable executions. Moreover, the secrecy in which most of its operations are conducted makes any potential investigation inoperable. Nonetheless, the Special Rapporteur received countless confidential complaints of excessive use of force and possible summary executions by members of the National Intelligence Agency which remain unaccounted for by Gambian judicial, administrative and police institutions.

72. Although the Special Rapporteur received information about a small number of prosecutions of security officers for the death of a suspect in their custody, it seems that not in a single case were the prosecutions successful.

73. The climate of impunity is compounded by a judiciary that lost its independence, being faced with the threat of dismissals, and by the reluctance of lawyers to take on human rights cases out of fear of reprisals against themselves or their families, thereby reducing the options for victims who wish to seek redress and exercise their rights. Although the National Agency for Legal Aid was established to assist persons charged with offences that carry the death sentence or a life sentence, the office is underresourced and overstretched.[51]

74. The Special Rapporteur gets the distinct impression from a number of contacts with officials of the State of the Gambia that they are, at best, unaware of the serious human rights issues facing their country, or are pretending not to know about them, in some cases because they fear for their jobs. This "disinformation" may to some extent be understandable if it were confined to the lower ranks, but it is also prevalent at the highest level. The Minister of Justice, for example, told the Special Rapporteur that the Gambia had appealed the decision of the ECOWAS Court in the case of Ebrima Manneh, which explained the lack of implementation of the judgement — which is not correct. Astonishingly, the Chief Justice emphatically denied any knowledge of the execution of the nine death row prisoners in August 2012, described above, in spite of the fact that these were the only judicial executions to have taken place in the Gambia in the last 27 years, and they were a cause of widespread international reaction. A number of the judges present at the same meeting who admitted to knowing about the executions insisted that all nine had been legitimately convicted for murder and had exhausted their appeal rights, which, as indicated earlier, is not true.

75. Almost all of those in charge of the various security branches of the State, when asked whether they had heard the widespread allegations that there was a hit squad called the "Jungullars" or "Junglers" operating in the country, strongly denied ever having heard such a name. Denying ever having heard the name is obviously a very different thing from denying that such an grouping exists. It is difficult to understand how those who are in charge of the safety of a State that places such a premium on safety cannot be aware of such allegations, given the frequency with which the matter is spoken about in the country and the detailed accounts that the Special Rapporteur heard from people who identify themselves as former members. The impression created is of an attempt to cover the matter up.

[51] For further information about the National Agency for Legal Aid, see A/HRC/28/68/Add.4.

National human rights institution

76. The national institutions dealing with human rights issues that are currently operating in the country are ineffective. The mandate of the Office of the Ombudsman is limited and does not include the power of investigation into human rights violations. The Office of the Ombudsman mostly handles administrative claims and does not address cases of excessive use of force. Although empowered to visit places of detention, it reportedly only inspects police cells. Moreover, it is criticized for its lack of independence, incapacity to enforce its recommendations, and lack of human and financial resources, and for the lack of public trust in the institution and its overall ineffectiveness. Following a pledge at the 2010 universal periodic review to establish a national human rights institution, the Government of the Gambia presented a draft bill in 2013, which was perceived as being not fully compliant with international standards, in terms of its independence, its procedures for the appointment and dismissal of members, and its funding. A new draft to be submitted to the National Assembly is pending. It should be emphasized that the creation of a national human rights institution in itself does not mean that human rights issues are addressed — in fact, if it is simply a public relations exercise it can worsen the situation by shielding abuses from further scrutiny.

G. Groups at risk

77. Human rights defenders, journalists and political opponents are systematically targeted by security agencies and are subjected to arbitrary arrest, detention, torture, enforced disappearance and extrajudicial execution, particularly at the hands of the National Intelligence Agency. Death threats and intimidation against them are also rampant, including from the President himself, who in 2009 threatened to kill anyone who sought to sabotage his Government — in particular human rights defenders and those who support them. These groups of people are also subject to prosecution on charges of sedition, libel and disturbance of public order, under sections 51, 178 and 167 of the Criminal Code, as well as on charges of "false information" and other online offences under the 2013 Information and Communication Act.

78. The Special Rapporteur received concerning reports about hate speech, persecution and violence against LGBT persons in the Gambia. Numerous reports have emerged of threatening and inflammatory public speeches by Mr. Jammeh against homosexuals. Such messages include threats to decapitate any homosexuals found in the country, depictions of gay people as "vermin" who should be treated worse than mosquitoes, threats to kill anyone who seeks asylum who claims to be persecuted for his or her sexual orientation, and assessments of homosexuals as more deadly than all natural disasters put together.

79. He is also concerned about the 2014 amendment to the Criminal Code on "aggravated homosexuality", which carries punishments of up to life in prison and contributes to the existing climate of hostility against LGBT persons. The approval of the amendment was followed by rounds of arrests, prosecutions and attacks, and humiliation and even torture of persons, because of their presumed sexual orientation. In addition, some were detained in the security wing of Mile 2 Prison. The Special Rapporteur warns that hate speech and discriminatory legislation risks inciting societal misconceptions and violence against LGBT persons, putting them at great risk of attacks, humiliation and even murder, and recalls the responsibility of States to respect the human rights of LGBT persons and to avoid discrimination, as well as to prevent and punish violence and abuses against them by third parties.

H. Fear of reprisals

80. The visit of the Special Rapporteur took place in an atmosphere of fear on the part of civil society, victims, witnesses and other interlocutors. There was a climate of intimidation being experienced by almost every person that the Special Rapporteur interviewed. Some interlocutors conveyed particular concern about possible reprisals following the meeting. Moreover, in the course of an interview, interlocutors indicated their fear that the meeting was being monitored by individuals stationed near the meeting place.

81. From the outset, and in compliance with the terms of reference for fact-finding missions, the Special Rapporteur sought assurances from the authorities that none of the persons he was in contact with or worked with during the visit would be threatened, harassed or punished or be subject to judicial proceedings after the country visit. He received a commitment to that effect at the highest level. The Special Rapporteur trusts that the Government will honour its guarantee. He remains in contact with sources on the ground to monitor the safety of the persons with whom he met. Any incidents of reprisal will be duly reported to the Human Rights Council and the General Assembly.

VI. Concluding remarks

82. **The invitation to the Special Rapporteurs at a time when the country was also being reviewed at the universal periodic review raised hopes that the Gambia was opening the door to renewed and strengthened engagement with the international community and the United Nations human rights mechanisms, which could help bring about the changes needed for the realization of human rights and the rule of law in the Gambia. That was the Special Rapporteur's expectation, in committing in good faith to the visit. However, the visit entailed serious challenges regarding access and was conducted in an overriding atmosphere of apprehension and fear from many who engaged with him.**

83. **Despite the challenges encountered during the visit, the Special Rapporteur hopes to remain engaged and to work in consultation with the Government and all relevant stakeholders to support the implementation of the recommendations contained in the present report. They are presented in a spirit of cooperation to assist the Government to find solutions to some of the challenges identified herein, that uphold the rule of law and promote accountability for human rights violations.**

84. **The Special Rapporteur believes that there could be a willingness in some sectors of government to exhibit an approach that is more conducive to the realization of human rights. There is, however, a general fear that inhibits such actions. The main cause of this fear resides in the approach followed at the highest levels of government, and that is where there is the greatest need for change.**

VII. Recommendations

A. To the Government of the Gambia

Legislation

85. **Ratify the human rights treaties to which it is not yet a party, particularly the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, and the International Convention for the Protection of All Persons from Enforced Disappearance.**

86. **Deposit with the Secretary-General of the United Nations the instruments of ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, and other instruments as applicable.**

87. **Harmonize domestic law with the Gambia's international treaty obligations.**

88. **Repeal or amend all national legislation that is incompatible with international human rights standards, including:**

(a) The Criminal Code (Amendment) Acts of 2005 and of 2014, sections 144 and 147, on "carnal knowledge of any person against the order of nature… and any other homosexual act" and "aggravated homosexuality";

(b) The Indemnity Act of 2001;

(c) The Information and Communication Act of 2013;

(d) The amendments to the Criminal Code which broaden definitions and impose harsher penalties for various offences, such as sedition, libel, public disorder, and giving false information;

(e) Section 18 (4) of the Constitution, which sets the threshold for the use of force excessively low.

Law enforcement

89. **Ensure that all norms and regulations on the use of force by law enforcement officials comply with international standards, including the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the Code of Conduct for Law Enforcement Officials.**

90. **Ensure that any use of force by law enforcement officials is proportionate and necessary in view of the threat posed, and that lethal force is only used when absolutely necessary in order to protect life against an immediate threat.**

91. **Provide regular human rights training to law enforcement officials (including those of the National Intelligence Agency and the National Drug Enforcement Agency), correctional service officers and military personnel, and ensure that human rights are an integral part of the curricula of their academies or training programmes.**

Death penalty

92. **Ensure that the National Assembly complies with the requirements under the 1997 Constitution to review the desirability of the death penalty, with a view to its abolition.**

93. **Pending abolition of the death penalty, declare an absolute moratorium on executions, excluding any conditionalities; remove from the law any mandatory imposition of the death penalty; commute all outstanding death sentences to term sentences; and ensure better conditions of detention for death row prisoners, as well as visits from their lawyers and family members.**

94. **Under no circumstances should the random and impulsive killing of a number of arbitrarily chosen death row prisoners be repeated.**

Accountability for human rights violations

95. **Investigate all cases of extrajudicial, summary or arbitrary execution, enforced disappearance, arbitrary detention and torture or ill-treatment, bring the perpetrators to justice, and provide full reparation to the victims and their families.**

96. **Ensure to human rights defenders, journalists, political opponents and other civil society actors the free exercise of their activities and refrain from harassment and intimidation against them. Investigate and punish all human rights violations against them.**

97. **Guarantee to LGBT persons the full and equal enjoyment of all human rights. Prevent, punish and publicly condemn all violations against them.**

98. **Improve the conditions of detention in all detention centres in the Gambia and investigate all allegations of deaths in custody, torture or ill-treatment.**

99. **Ensure the carrying out of independent forensic examinations into all deaths in custody and in all suspected cases of extrajudicial, arbitrary or summary execution. Examinations should be conducted by experts trained in accordance with international standards, including those contained in the United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.**

Government officials and institutions

100. **Ensure security of tenure for government officials, including high-ranking ones.**

101. **Ensure and respect the independence and impartiality of the judiciary as a cornerstone for the protection of human rights in the Gambia. Ensure their independent appointment and security of tenure.**

102. **Expedite the establishment of a national human rights institution and ensure that the National Human Rights Commission Bill before the National Assembly fully complies with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). Ensure through appointment and other procedures that an independent institution is established.**

103. **Expand, at least while the process to establish the national human rights institution is pending, the power of the Office of the Ombudsman to include investigations into human rights violations, and ensure that it is independently appointed and has sufficient autonomy and resources to carry out its mandate effectively.**

104. **Strengthen the independence and effectiveness of the Human Rights Unit within the Gambian Police Force and establish similar units within the National Intelligence Agency and the National Drug Enforcement Agency.**

105. **Establish a special judicial commission of inquiry to investigate whether there is a paramilitary group called the "Jungullars" or "Junglers" and also to visit the alleged places of abuse, such as the National Intelligence Agency headquarters and the maximum security wing of Mile 2 Prison, and initiate iuvestigations, prosecutions and convictions.**

106. **Ensure an active role of the judiciary in the oversight of prisons and places of detention. Upon ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, establish a national preventive mechanism in accordance with article 17 of the Optional**

Protocol or designate the national human rights commission, when established in compliance with the Paris Principles, as such mechanism. The mechanism should be mandated to conduct unannounced visits to all places of detention, to receive complaints, to initiate or recommend prosecutions, to produce findings and to implement recommendations.

107. **Ensure that all legislation and regulations governing the conduct of law enforcement officials are publicly available and easily accessible.**

108. **Include human rights in the training curricula for all law enforcement officials.**

International and regional organizations

109. **Commit to full respect of the terms of reference for fact-finding missions and issue a standing invitation to all special procedures of the Human Rights Council. Consider prioritizing the visits of the Working Group on Enforced or Involuntary Disappearances, the Working Group on Arbitrary Detention, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Working Group on Death Penalty and Extra-Judicial, Summary or Arbitrary Killings in Africa.**

110. **Ensure regular and timely reporting to the human rights treaty bodies.**

111. **Formulate a national action plan, through an inclusive process with participation from civil society, to implement the recommendations of the universal periodic review.**

112. **Comply with the ruling of the ECOWAS Court of Justice in the cases of Mr. Hydara and Mr. Manneh requesting the carrying out of a diligent investigation on the cases and the payment of compensation to the families.**

B. **To the international community**

113. **Monitor the human rights situation in the Gambia and bring any abuses, in particular right-to-life abuses, to public scrutiny and debate.**

114. **Consider providing funds to support the work or the establishment of credible local civil society organizations working on the promotion and protection of human rights.**

115. **Accompany and support the Government in the implementation of the present recommendations.**

C. **To civil society and other actors**

116. **Monitor the human rights situation in the Gambia and bring any abuses to public scrutiny.**

117. **Provide assistance to and support the work of local civil society organizations working on the promotion and protection of human rights.**

118. **Accompany and support the Government in the implementation of the present recommendations.**